IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.695 OF 2005

Sureshkumar Sukhadevbhai Belani)
24 age, having permanent address)
as : Ward No.4B, Bungalow No.16/C)
Besides Sindhu Varsha Colony,)
Adipur, Kutch.)...Petitioner
(Org.Accused)

Versus

1. The State of Maharashtra)
Notice to be served through)
the Learned Public Prosecutor)
High Court of Maharashtra at)
Bombay, Mumbai.)

2. Mahesh Govindram Rajput)
Residing at A/2, Meera Mansion)
Sion Circle, Sion, Mumbai-22.)...Respondents
(Respdt.No.2 Orig.
Complainant)

Mr.S.V.Marwadi with Mr.Pravin Mane, Advocate for the petitioner.

Mr.I.S.Thakur, APP for Respondent No.1
Ms.Rohini Wagh, Advocate for the Respondent No.2

CORAM : R.M.S.KHANDEPARKAR &

P.V.KAKADE, JJ.

DATE : 2ND MAY, 2005.

P.C.:

1. Heard.

2. The Petitioner seeks to challenge the FIR being M.E.C. No.3/04 registered at Sion Police Station, Mumbai for the offences alleged to have been committed by the Petitioner and punishable under Sections 406, 408, 420, 467, 468, 47 and 120-B of the Indian Penal Code. The challenge is solely on the ground that no investigation can be carried out in relation to the offence committed outside India without prior sanction of the Central Government in view of Section 188 of the Criminal Procedure Code.

3. As rightly submitted by the learned APP that the Apex Court in the case of Ajay Agarwal vs. Union of India & Ors. reported in **AIR 1993 SC 1637** has clearly held that the sanction under Section 188 of Cr.P.C. is not a condition precedent to take cognizance of an offence. Evidently the question for sanction can arise only when the trial in relation to the offence has to commence before the criminal court. It does not require to have sanction for the purpose of the investigation by the investigating agency. On that count itself the

petition is liable to be dismissed.

4. The learned advocate for the petitioner while drawing our attention to the decision in the case of **S.W.Palanitkar & Ors. vs. State of Bihar & Anr**. reported in **(2002) 1 SCC 241** has sought to contend that the complaint on the face of it nowhere discloses any offence as the goods which were ordered were already sent to the Consignee in terms of the order placed in the matter. The complaint do not relate to failure to supply the goods. However, the complaint relates to the alleged conspiracy by the petitioner to deceive the complainant and further alleged preparation of forged document in the form of bill of lading and consequently loss to the complainant. The decision of the Apex Court in **S.W.Palanitkar (supra)** is of no help to the petitioner to stall the investigation at this stage. The Apex Court therein had undoubtedly ruled that before issuing process pursuance to a complaint, the Magistrate has to essentially keep in mind the scheme contained in the provisions of Sections 200-203 of Cr.P.C. and exercise the power judiciously and not mechanically or in a routine manner. The petition does not relate to challenge to any order of the Magistrate passed in the

proceeding under Secs.200-203. It merely relates to the challenge to the authority of the investigating agency in India to investigate about the offence alleged to have been committed outside the country and that to taking recourse of Section 188 of Cr.P.C.

5. For the reasons stated above, therefore, there is no case for interference of this court in the matter at this stage, hence the petition is rejected.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)